

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-6087

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-6087

JESSE B. STEPHENS, on behalf of
himself and all other persons
similarly situated,

Plaintiff-Appellant,

-against-

UNITED STATES OF AMERICA; UNITED
STATES POSTAL SERVICE; E. THEODORE
KLASSEN, in his capacity as Post-
master General of the United States;
UNITED STATES CIVIL SERVICE COM-
MISSION; ROBERT E. HAMPTON, in his
capacity as Chairman of the United
States Civil Service Commission;
and ELMER B. STAATS, in his capacity
as Comptroller General of the United
States,

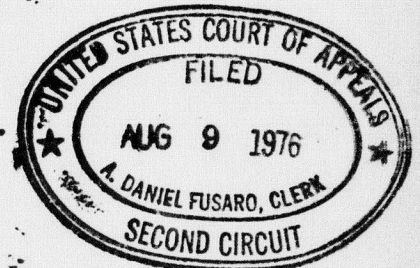
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

JOINT APPENDIX

ROBERT B. FISKE, JR.,
United States Attorney
For the Southern District
of New York Attorney for the
Defendants-Appellees
One St. Andrews Plaza
New York, New York 10007
(212) 791-1968

MICHAEL D. HAMPDEN
Attorney for Plaintiff-
Appellant
The Legal Aid Society
1029 East 163rd Street
Bronx, New York 10459
(212) 991-4600



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CIVIL DOCKET
UNITED STATES DISTRICT COURT

DOCKET ENTRIES

Jury demand date:

CLASS ACTION

D.C. Form No. 106 Rev.

73 CH. 1559
ATTORNEYS

TITLE OF CASE

JESSE B. STEPHENS, ON BEHALF OF HIMSELF AND ALL OTHER
PERSONS SIMILARLY SITUATED,

AGAINST,

UNITED STATES OF AMERICA,
UNITED STATES POSTAL SERVICE,
THEODORE KLIASSNES IN HIS CAPACITY AS POSTMASTER GENERAL
OF THE UNITED STATES;
UNITED STATES CIVIL SERVICE COMMISSION,
ROBERT E. HAMPTON, IN HIS CAPACITY AS CHAIRMAN OF THE
UNITED STATES CIVIL SERVICE COMMISSION AND
GILMER B. STAATS, IN HIS CAPACITY AS COMPTROLLER GENERAL
OF THE UNITED STATES.

For plaintiff:

GERALD MANN
THE LEGAL AID SOCIETY
1029 East 163rd St.
Bronx, N.Y. 10459
991-4600

For defendant:

U.S. Atty.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk	4/11/73	Legal Aid	15-	
J.S. 6 mailed ✓	Marshal	4/12/73	U.S. Atty.	-	15-
Basis of Action:	Docket fee				
TO PROTECT RIGHTS SECURED BY FEDERAL LAW PURS TO 28 U.S.C. 135	Witness fees				
Action arose at:	Depositions				

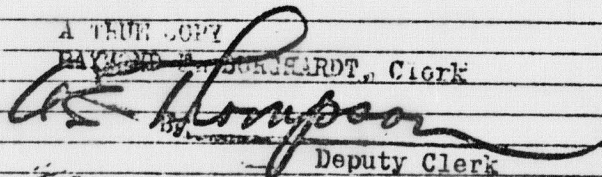
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JUDGE GRIESEA
73 CIV. 155

DATE	PROCEEDINGS	Date Order Judgment
April-73	Filed Complaint. Issued Summons.	
April-73	Filed Order appointing Clinton J. Thomas to serve a summons and complaint upon defts. Acting Clerk.	
Apr 23-73	Filed summons and affdvt of service by Clinton J. Thomas on deft United States of America on 4-13-73.	
Aug. 21-73	Filed Affdvt in opposition to motion for determination of class action.	
Aug. Defts.	memo of law in opposition to pltf. motion for determination of class action	
Aug. 21-73	Filed ANSWER to complaint by U.S.A.	AUSA
Dec. 11-73	Filed stip. & order that pltf. may file and serve an amended complaint-Griesa, J.	
Dec. 14-73	Filed amended complaint	
Jan. 21-74	Filed defts' ANSWER to amended complaint.	USAt
Feb. 4-74	Filed memorandum that pltf's motion for a class action treatment and for the convening of a three-judge court is denied in all respects--So ordered--Griesa, J.--mailed notice.	
July 3-74	Filed Stip & Order extending time for defts to answer or object to interrogs. to 7-16-74.....GRIESA, J.	
Jul. 18-74	Filed defts answers to pltf's interrogs.	
SEP 23-74	PRE-TRIAL CONFERENCE HELD BY GRIESA, J.	
11-21-75	PRE-TRIAL CONFERENCE HELD BY GRIESA, J.	
01-06-76	BEFORE GRIESA, J. non-Jury trial begun.	
11-07-76	trial cont'd and concluded. Judge's decision for deft. U.S.A. (Judgment to be submitted by USA)	
01-22-76	Filed Judgment # 76,022-- that deft. shall have judgment against the pltf. in the amount of \$87.00 plus costs to be taxed. GRIESA, J. Judgment entered- 01-22-76 Clerk (m/n)	
03-15-76	Filed Judgment # 76,216-- ordered that the Judgment previously entered on 1-22-76 is vacated and that the deft. U.S. Postal Service shall have judgment against the pltf in the sum of \$87.00 plus costs to be taxed. GRIESA, J. Judgment entered- 3-16-76 Clerk (m/n)	
04-06-76	Filed transcript of record of proceedings, dated 1-6, 1-7, 76	
05-12-76	Filed pltf's notice of appeal to USCA from the judgment entered on 3-15-76. Copy mailed to: U.S. Attorney, S.D. of N.Y. Ent. 5-12-76	
6-18-76	Filed reply to counterclaim	
6-18-76	Filed stipulation regarding record on appeal	
6-18-76	Filed stipulation of exhibits to record on appeal	

A TRUE COPY

RAYMOND E. BURKHARDT, Clerk


 Deputy Clerk

SJW:bj
73-1231
n-569

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Green *(initials)*

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-----X

JESSE B. STEPHENS,	:	
	:	
Plaintiff,	:	73 Civ. 1559 (TPG)
	:	
-against-	:	<u>STIPULATED FACTS</u>
	:	
UNITED STATES OF AMERICA, et al.,	:	
	:	
Defendants.	:	

-----X

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties hereto, that the following facts are true and accurate although both parties reserve the right to adduce evidence in support of factual findings supplemental to those herein and reserve the right to object to the relevance or materiality of any fact agreed upon herein:

1. The plaintiff, Jesse B. Stephens, was continuously employed by the United States Post Office Department and its successor, the United States Postal Service, from January 24, 1948 through August 12, 1971.

2. On March 22, 1969, the plaintiff was arrested by postal inspectors and charged with embezzling a single test package prepared and placed into the mails by employees of the Post Office Department. This package initially came into the plaintiff's hands in the course of his official duties within the registry section of the 36th Street postal facility, New York, New York.

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3. By letter dated March 25, 1969, the plaintiff was advised of proposed action to remove him from postal employment and to effect his suspension from such employment without pay pending his removal. The proposed suspension and removal were based upon a charge that on March 22, 1969, during the course of his employment the plaintiff had embezzled the test package mentioned in paragraph 2, above. A true copy of the letter of March 25, 1969 is annexed hereto as Exhibit 1.

4. By letters dated March 28, 1969, the plaintiff was advised of his suspension from postal employment without pay commencing March 31, 1969. True copies of these letters are annexed hereto as Exhibits 2 and 3.

5. On October 14, 1969, the plaintiff was indicted by a Federal grand jury and charged with embezzlement of the test package in violation of 18 U.S.C. §1709.

6. On January 8, 1971, the plaintiff was adjudged guilty of the embezzlement charged in the indictment and was sentenced to serve a term of six months' imprisonment. At the time of sentencing, the plaintiff was released on his own recognizance pending his appeal. A true copy of the judgment and commitment is annexed hereto as Exhibit 4.

7. On May 22, 1971, the plaintiff's conviction was affirmed by the Court of Appeals for the Second Circuit.

8. The plaintiff pursued and exhausted his administrative remedies within the Postal Service to challenge his suspension and proposed dismissal.

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9. By letter dated August 2, 1971, the plaintiff was advised by the Postal Service that the charge of embezzling the contents of the test package on March 22, 1969 was sustained as was the suspension pending disposition of the charge. A true copy of this letter is annexed hereto as Exhibit 5.

10. By letter dated August 6, 1971, the plaintiff was advised that his removal from postal employment would be effective August 12, 1971. A true copy of this letter is annexed hereto as Exhibit 6.

11. The plaintiff appealed the termination of his employment to the defendant Civil Service Commission.

12. After a hearing on January 17, 1972, the Civil Service Commission sustained the suspension and subsequent removal of the plaintiff from postal employment. Plaintiff was notified of this action by letter dated February 23, 1972. A true copy of this letter is annexed hereto as Exhibit 7.

13. The sole grounds of plaintiff's criminal conviction, his suspension from employment and his eventual dismissal was his embezzlement of the test parcel on March 22, 1969.

14. At the time of the termination of the plaintiff's employment on August 12, 1971, he was a postal career service employee in the title distribution window clerk, level 5, step 11, and as such his annual salary was \$7,898.00.

15. At the time that the plaintiff's employment was terminated on August 12, 1971 there had been deducted from his salary during his employment the sum of \$6,606.02, which sum had been deposited on his behalf in the Civil Service Retirement and Disability Fund. This sum, plus accrued interest in the amount of \$232.81, represented plaintiff's lump sum retirement credit in the Civil Service Retirement and Disability Fund as of January, 1972.

16. At the time of the termination of the plaintiff's employment, he had earned but not received payment of salary in the amount of \$240.00.

17. At the termination of plaintiff's employment he had a right to receive a sum representing payment for unused annual leave. The precise amount of the payment plaintiff was entitled to receive in this regard is in dispute between the parties but was not less than \$454.17.

18. The Postal Service has withheld from the plaintiff all payment of final salary referred to in paragraph 16 above and all of the lump sum in lieu of annual leave referred to in paragraph 17 above, and plaintiff has never had actual possession of these funds.

19. By letter dated November 13, 1969, the plaintiff was notified that the Post Office Department attributed losses in the amount of \$8,425.46 to thefts allegedly committed by the plaintiff other than the theft of which he was subsequently convicted. By this letter the Post Office Department requested payment from the plaintiff of this amount and indicated that set-off of the Government's loss would be made against funds due the plaintiff from the government unless payment was received. A true copy of this letter is annexed hereto as Exhibit 8.

20. By letter dated November 17, 1969, Mr. Edward V. Morand, Esq., then counsel for Mr. Stephens, wrote to the Post Office Department requesting details of the losses referred to in the Post Office Department's demand letter of November 13, 1969, Exhibit 8. A true copy of this letter is annexed hereto as Exhibit 9.

21. By letter dated December 16, 1969, the Post Office Department replied to Mr. Morand's letter of November 17, 1969, Exhibit 9, offering him the opportunity to inspect the forms supporting the losses being charged to Mr. Stephens. A true copy of this letter is annexed hereto as Exhibit 10.

22. By letter dated January 21, 1970, Edward V. Morand advised the Post Office Department that he had reviewed the papers made available to him and found them inadequate to support the claim asserted against Mr. Stephens. A true copy of this letter is annexed hereto as Exhibit 11.

23. By notice dated August 6, 1971, plaintiff was notified by the Postal Service that it alleged that there were known governmental losses chargeable to him and that until further notice all monies due him would be withheld. A true copy of this letter is annexed hereto as Exhibit 12.

24. By letter to the Postal Service dated October 5, 1971, the plaintiff denied that the government had incurred any losses by reason of any misconduct by him, and protested the withholding of any monies from him. A true copy of this letter is annexed hereto as Exhibit 13.

25. On or about November 7, 1971, plaintiff, while serving his sentence for the theft of the test package, applied to the Civil Service Commission for payment of his lump sum retirement credit. A true copy of this application is annexed hereto as Exhibit 14.

26. Prior to November, 1971, the Postal Data Center, withheld payment of plaintiff's final salary and unused leave in the amount of \$694.17 and had requested the Civil Service Commission to set off funds covering the remaining amount of the claim, \$7,731.29. A true copy of the Postal Service request to the Civil Service Commission for set off is annexed hereto as Exhibit 15.

27. By notice dated January 14, 1972, plaintiff was notified by the Civil Service Commission that the Postal Service had advised it that he was indebted to the United States in the sum of \$7,731.29, and that at the Postal Service's request, the Civil Service Commission was withholding from him payment of his lump sum retirement credit of \$6,838.83. A true copy of this notice is annexed hereto as Exhibit 16.

28. On or about February 4, 1972, the Postal Service applied to plaintiff's claimed \$8,425.46 indebtedness to it, the sum of \$7,533.00, consisting of the following: \$240.00 of final salary, \$454.17 of unused leave and \$6,838.83 of the lump sum retirement credit otherwise due the plaintiff. The remainder of the claimed indebtedness, \$892.46, remains uncollected.

29. By letter of May 24, 1972, to the Postal Service, plaintiff's counsel requested notice of final determination of his claim for his terminal leave pay, retirement fund contributions and bonus of \$300.00 allegedly due him. A true copy of this letter is annexed hereto as Exhibit 17.

30. In response to the plaintiff's letter of May 24, 1972, Mr. William J. Cotter, Assistant Postmaster

General of the Postal Service, responded by letter of June 2, 1972, wherein he advised that the Postal Service had set off the amount of \$7,533.00 in funds otherwise due the plaintiff in satisfaction of the Postal Service losses allegedly caused by plaintiff's thefts. A true copy of this letter is annexed hereto as Exhibit 18.

31. By letter to the Civil Service Commission, dated November 3, 1972, plaintiff by his attorney requested that plaintiff's November 7, 1971, application to it for a lump sum retirement refund be considered withdrawn, and his right to an annuity re-instated. A true copy of this letter is annexed hereto as Exhibit 19.

32. By letter dated November 22, 1972, the Civil Service Commission denied plaintiff's November 3, 1972 application to withdraw his application for payment of his lump sum retirement credit. A true copy of this letter is annexed hereto as Exhibit 20.

33. By letter dated November 6, 1972, plaintiff's counsel requested that the Comptroller General of the United States annul the set off action taken by the Postal Service against the plaintiff and remand the matter for a hearing. A true copy of this letter is annexed hereto as Exhibit 21.

34. By letter dated February 22, 1973, the Postal Service responded to plaintiff's letter to the Comptroller General, asserting that the plaintiff was given sufficient notice of the law and facts upon which the Postal Service had based its set off. A True copy of this letter is annexed hereto as Exhibit 22.

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35. No court action has been instituted by the Postal Service, Civil Service Commission or other United States governmental agency prior to defendant's answer in this action to establish the Postal Service claim that plaintiff is indebted to it.

Dated: New York, New York

January 28, 1975

MICHAEL D. HAMPDEN
Attorney for Plaintiff

THE LEGAL AID SOCIETY
1029 East 163rd Street
Bronx, New York 10459
Tel.: (212) 991-4600

By: Ian F. Feldman
IAN F. FELDMAN
Of Counsel

PAUL J. CURRAN
United States Attorney for
the Southern District of
New York
Attorney for Defendants

By: Samuel J. Wilson
SAMUEL J. WILSON
Assistant United States
Attorney
Tel.: (212) 791-1971-1970

So ORDERED: April 3, 1975

Thomas P. Griesa

U.S.D.J. ED

A10

POST OFFICE DEPARTMENT
POSTAL INSPECTOR

INSPECTOR
S. M. Jones

New York, N.Y. 10001

CASE NO.
105012-SD (P)

March 25, 1969

Mr. Jesse B. Stephens
Apt. 1-D
300 East 159th Street
Bronx, New York 10451

Dear Mr. Stephens:

This is advance notice of at least 35 days from the issuance date of this letter that it is proposed to remove you from the Service, suspend without pay for such period as may be administratively decided, or to take such other disciplinary action as may be deemed warranted for the following reason:

CHARGE NO. 1:

You are charged with removing mail from official channels in that on March 22, 1969, at 10:00am, while officially employed as a regular clerk in the Registry Section of the 36th Street Facility of the New York, N.Y. post office, you opened and removed the contents from register parcel #372641-X addressed to Kimberley Jewelers, 5764 Hollywood Boulevard, Los Angeles, California 90028 bearing a return address William Oliver, Diamond-Watches-Jewelry, 10 West 47th Street, New York, N.Y. 10036 which had been endorsed for return to the sender. You concealed the contents of this parcel on your person where it was found by Postal Inspector S. M. Jones and Investigative Aide Eugene Zambarda after you had been apprehended in the aforementioned Registry Section.

In view of the nature of the offense cited in Charge No. 1, it is believed it would not be in the best interest of the Government to retain you in an active duty status pending action on the charge. You are hereby notified that the Acting Regional Director, Mr. William A. Carroll, Jr., General Post Office, New York, N.Y. 10098, proposes to suspend you from an active duty status pending action on the charge.

EXHIBIT 1

EXHIBIT *22*

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BEST COPY AVAILABLE

New York, N.Y.

- 2 -

Case No. 105012-SD (P)

You are hereby given 24 hours from the receipt of this letter within which to reply to Mr. John W. Strachan, Postmaster, General Post Office, New York, N.Y. 10001, to show reasons why this suspension should not be effected. You may reply personally or in writing, or both, and be accompanied by a representative if you so choose.

If you wish to reply personally and/or in the company of a representative, you may contact Employee Relations Officer Robert Dravin or Employee Relations Assistant Carl T. Bignon at Room 3509, General Post Office, New York, N.Y. 10001, between the hours of 9 A.M. and 4 P.M. Mondays through Fridays for a mutually convenient time. If you reply in person, a summary of your oral reply will be prepared by the Postmaster or his designee, who will forward it with the Postmaster's recommendation to the Acting Regional Director. If you wish to reply in writing, direct your reply to the Postmaster, c/o Employment & Services Section, Room 3509, General Post Office, 33rd Street & Eighth Avenue, New York, N.Y. 10001. This reply will be forwarded to the Acting Regional Director with the Postmaster's recommendation.

After the expiration of the 24-hour period, you will be advised in writing, by the Acting Regional Director, William A. Carroll, Jr., New York, N.Y. 10098, of his decision with regard to suspending you. If the decision is adverse, you will be informed as to the charge relied upon as the reason for taking the adverse action. You will be advised of the decision reached regardless of whether you reply to this letter.

You are hereby given ten calendar days from the receipt of this letter of proposed adverse action within which to reply. You may reply personally (and in the company of a representative, if you choose) or in writing, or both personally and in writing, to Mr. John W. Strachan, Postmaster, New York, N.Y. 10001. You may furnish affidavits or other evidence in support of your reply.

If you wish to reply personally and/or in the company of a representative, you may contact Employee Relations Officer Robert Dravin or Employee Relations Assistant Carl T. Bignon at Room 3509, General Post Office, New York, N.Y. 10001, between the hours of 9 A.M. and 4 P.M. Mondays through Fridays, for a mutually convenient time. If you reply in person, a summary of your oral reply will be prepared by the Postmaster or his designee, who will forward it with the Postmaster's recommendation to the Acting Regional Director. If you wish to reply in writing, direct your reply to the Postmaster, c/o Employment and Services Section, Room 3509, General Post Office, 33rd Street & Eighth Avenue, New York, N.Y. 10001. This reply will be forwarded to the Acting Regional Director with the Postmaster's recommendation.

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New York, N.Y.

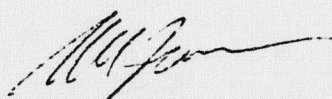
- 3 -

Case No. 105012-SD (P)

If additional time is needed to prepare your reply, it will be considered upon written application to the postmaster showing the necessity. After the expiration of this period all the facts in your case, including your reply, if made within the allotted time, and affidavits, if any, will be given careful consideration by the Postmaster at New York, N.Y., who will submit his recommendation as to the action he believes warranted in your case to Mr. William A. Carroll, Jr., Acting Regional Director, General Post Office, New York, N.Y. 10093.

All the facts in your case, including your reply and the Postmaster's recommendation, will be given careful consideration by Mr. Carroll, who will furnish you with a letter of decision. If the decision is adverse, you will be advised as to the charges relied upon as the reasons for taking the adverse action. You will be advised of the decision reached, regardless of whether you reply to this letter.

Very truly yours,



S. M. Jones
Postal Inspector

al

75

March 28, 1969

Mr. Jesse B. Stephens
Career Distribution Clerk
300 East 159th St. Apt. 1D
Bronx, NY 10451

Dear Mr. Stephens:

There is attached decision dated March 28, 1969 rendered by the Acting Regional Director regarding the proposal to suspend you from duty without pay as set forth in the letter of proposed Adverse Action addressed to you dated March 25, 1969.

The Acting Regional Director has authorized your suspension from the Postal Service for an indefinite period. accordingly you will be suspended from duty without pay beginning March 31, 1969.

Sincerely,

John R. Strachan
Postmaster

encl.

CC: 36th St. Facility

EXHIBIT - 2

31:JW:dl
Ext. 7133

March 28, 1969

Mr. Jesse B. Stephens
Career Distribution Clerk
United States Post Office
New York, New York 10001

Dear Mr. Stephens:

This will refer to the proposal to suspend you as set forth in the letter addressed to you from a Postal Inspector dated March 25, 1969 to which you made a written reply dated March 26, 1969.

In view of the serious nature of the charge (removing mail from official channels while officially employed) as set forth in the letter of proposed Adverse Action dated March 25, 1969, it is my decision that you shall be suspended from the Postal Service for an indefinite period, pending a final adjudication of the charge preferred against you.

You have a right to request to be carried in a pay status to the extent of your accrued annual leave. If you decide to be carried in an annual leave status, your suspension will start when your accrued leave has been exhausted. However, if you do not choose to be carried in an annual leave status, the Postmaster will advise you of the effective date of your suspension.

In addition to advising you of the effective date of your suspension, the Postmaster will furnish you with the "Employee's Copy" of Form 50, Notification of Personnel Action.

You have a right to appeal this decision to:

- (1) the Assistant Postmaster General, Bureau of Operations, Post Office Department, Washington, D. C. 20260, or
- (2) the Director, U. S. Civil Service Commission, New York Region, 26 Federal Plaza, New York, New York 10007.

Even though you appeal this decision under the Department's Procedures, you will be continued in a non-pay status pending my decision on the action to be taken on the charge.

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EXHIBIT 18

ALS

Any appeal must be submitted, in writing, and must identify the reasons for the appeal. Your eligibility to appeal to the U. S. Civil Service Commission is based on your Career Status.

Should you file an appeal with the Commission or through the department's procedures you are assured that you will

- (a) have freedom from restraint, interference, coercion, discrimination or reprisal
- (b) have the right to be accompanied, represented, and advised by a representative of your own choosing, and
- (c) if the person assisting you is a postal employee he shall be permitted a reasonable amount of official time to assist you in the preparation of the appeal, and he will be extended the right contained in item (a) above.

If you appeal this decision to the U. S. Civil Service Commission, you have no right to appeal through the Postal Appeal Procedures. If you will, after he renders the appellate decision, have the right to appeal his decision either to the U. S. Civil Service Commission, the Board of Appeal and Review or to Advisory Arbitration.

If you file an appeal to the Director, U. S. Civil Service Commission, or with the Assistant Postmaster General, Bureau of Operations, please furnish me and the Postmaster with a signed copy of your appeal.

Sincerely yours,

William A. Carroll
Acting Regional Director

cc: ~~RF~~

PM, New York, NY 10001
Case No. 105012-SD (P) Inspector S.M. Jones
DC 69-1229

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McDonald A. 1st

McLeod

JUDGMENT AND COMMITMENT (Rev. 2-68)

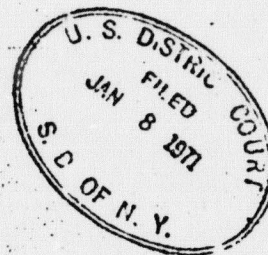
Cr. Form No. 25

United States District Court
FOR THE
SOUTHERN DISTRICT OF NEW YORK

United States of America

No. 69 Cr. 719

JESSE B. STEPHENS



On this 8th day of January, 1971, ~~75X~~ came the attorney for the government and the defendant appeared in person and by Edward V. Morand, Esq.,

It is ADJUDGED that the defendant upon his plea of not guilty and a finding of guilty by the Court, defendant having waived trial by jury, has been convicted of the offense of being a Postal Service employee, unlawfully, wilfully and knowingly embezzling a package which had come into his possession and was intended to be conveyed by mail. (Title 18, U.S. Code, Section 1709.)

as charged¹ and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is ADJUDGED that the defendant is guilty as charged and convicted.

It is ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SIX (6) MONTHS.

Defendant released on his own recognizance pending appeal.

~~XXXXXXXXXXXX~~

It is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Edward V. Morand
United States District Judge

J. Livingston
Clerk

¹ Insert "by (name of counsel), counsel" or without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. Insert "in count number ____." If requires sentence, specify in counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law, and enter any order with respect to



PERSONNEL DEPARTMENT
Washington, DC 20260

August 2, 1971

Mr. Jesse B. Stephens
300 East 159th Street
Bronx, New York 10451

Dear Mr. Stephens:

This appellate level has completed its examination of your appeals from the adverse decisions of the Regional Director as outlined in his letters to you dated March 28 and June 2, 1969.

A careful review has been made of the entire case file, including the charge against you, your written replies of March 26, April 2 and April 8, 1969 and the recommendations of the postmaster. A hearing was scheduled for July 15, 1969 but was postponed pending initial court action. You were found guilty in court in November, 1970. The hearing was then scheduled for January 4, 1971; however, at the request of your attorney it was continued until February 4, 1971. You were informed that no further postponements would be granted. Accordingly your attorney's request for a continuance pending a court appeal was denied.

A postponement of the administrative hearing may be granted pending an initial court decision so that the individual does not have to divulge his defense in advance of court action. There is no obligation to hold administrative action in abeyance pending a court appeal. In refusing to participate and withdrawing from the hearing of February 4, 1971, you forfeited your right to an administrative hearing and opportunity to cross examine your accusers. Mr. Edward V. Morand's letter of April 9, 1971 has been included in the case file. Your appeal case is being adjudicated based upon the existing evidence of record.

It is the opinion of this appellate level that all essential procedural requirements have been met and your rights were not violated.

You are charged with removing mail from official channels in that on March 22, 1969 you opened and removed the contents of a registered parcel and concealed the contents on your person. Details of the charge are contained in the notice of proposed adverse action dated March 25, 1969. The charge is supported by the sworn affidavit of Clerk Alexander Beck, the Investigative Summary marked Exhibit 23, and by Exhibits M-2, M-3 and M-5.

Since you and/or your representative were not present throughout the hearing, the hearing is not valid in that it violated Article X, Sect: G.4.d. of the National Agreement. Inspector Stewart M. Jones' statement cannot be accepted as sworn testimony but it does tend to support his Investigative Summary dated March 25, 1969. Charge Number 1, which is supported by substantial evidence of record, is sustained.

Based upon the sustained charge your removal is considered to be both in the best interests of and will promote the efficiency of the postal service. The Regional Director's decision to remove you from the postal service is sustained. You will be advised locally of the effective date of your removal. The Regional Director's decision to place you on emergency suspension pending disposition of the charge is considered to have been both warranted and necessary in order to insure the security of the mails.

You have the right of electing to appeal this decision to one of the following: (1) the Board of Appeals and Review, Personnel Department, Post Office Department, Washington, D.C. 20260, (2) to the Director, Civil Service Commission, New Federal Building, 26 Federal Plaza, New York, New York, 10007, or (3) if you are a member of a unit where exclusive recognition has been granted to an employee organization having an agreement for advisory arbitration, you may, with the organization's consent, appeal to arbitration provided the organization is willing to pay one-half of the cost.

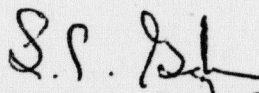
An appeal to the Board of Appeals and Review should contain a full statement as to the reason for appealing this decision and include a copy of the decision of this office. If you appeal to the Board of Appeals and Review, you do not have a further right to appeal to the U. S. Civil Service Commission. If you elect to appeal to the U. S. Civil Service Commission, you do not have a further right to appeal to the Board of Appeals and Review.

A19

-3-

Any further appeal must be in writing at any time after receipt of this letter of decision but not later than fifteen (15) calendar days after the adverse action has been effected. If the adverse action has been effected prior to this decision, you have fifteen (15) days from the receipt of this letter within which to appeal. A signed copy of your appeal must also be furnished to this office.

Sincerely yours,



Lawrence C. Gayle
Assistant Postmaster General
Employee Relations Department

OFFICE OF
THE POSTMASTER

UNITED STATES POST OFFICE

NEW YORK, N.Y. 10001

IN REPLY REFER TO

CERTIFIED MAIL(975682)

971-7148

August 6, 1971

Mr. Jesse B. Stephens
Distribution Clerk
300 East 159th Street Apt.#1-D
Bronx, New York 10451

Dear Mr. Stephens:

In accordance with the decision of the Assistant Postmaster General, which was mailed to you on August 2, 1971, you are advised that your removal will be effective August 12, 1971. Your copy of the Form POD showing your removal, is enclosed herewith.

Sincerely yours,

George J. Hass
George J. Hass
Officer in Charge

Copy by ordinary mail.



ADDRESSEE
DIRECTOR, NEW YORK REGION
U.S. CIVIL SERVICE COMMISSION
FEDERAL BUILDING, 25 FEDERAL PLAZA
NEW YORK, N.Y. 10007

UNITED STATES CIVIL SERVICE COMMISSION

NEW YORK REGION

COMPRISING NEW YORK, NEW JERSEY,
PUERTO RICO AND THE VIRGIN ISLANDS

OFFICE OF THE DIRECTOR, NEW YORK, N.Y. 10007

IN REPLY PLEASE REFER TO

NY:A:

YOUR REFERENCE

FEB 23 1972

Regional Postmaster General
U. S. Postal Service
Greater N. Y. Metropolitan Region
Main Post Office Building
New York, New York 10098
Attn: Manager, Employee Relations

Re: Section 14 Appeal
Appellant: ~~James B. Stephens~~
Position: Distribution Clerk
Agency and Location: U. S. Post Office
New York, New York

Dear Sir:

In accordance with the instructions contained in Section 772.306 of the Commission's Regulations governing appeals of preference eligibles under Section 14 of the Veterans' Preference Act of 1944, there is transmitted herewith a copy of the decision in the case of the above-named preference eligible whose appeal has been considered by this office.

The further appeal rights of the parties to the appeal are fully set forth in the concluding paragraphs of the attached decision.

FOR THE REGIONAL DIRECTOR

Sincerely yours,

Bert Ganser
Appeals Examiner

Nature of Recommendation:

Agency action sustained

Attachment:

Copy of Decision
Summary of Hearing

Copies to:

Mr. James B. Stephens
300 East 159 Street
Apartment 12
Bronx, New York 10451

Mr. Bernard Schwartz
National Representative
American Postal Workers Union
750 West End Avenue
New York, New York 10025

NY AD-170 Rev.
August 1968

113

THE MI

EXHIBIT 7

NMENT

A22

8

NOV 13 1969

Mr. Jesse P. Stephens
300 East 159th Street
Bronx, New York 10451

RE: Case No. 105205-SD

Dear Mr. Stephens:

On March 22, 1969, while employed at the New York, New York, post office, you were apprehended for the theft and rifling of registered mail. An examination of the reported registry losses related to your depredations disclosed your responsibility for losses totaling \$3,425.46. This is in addition to the amount recovered from you at the time of your apprehension.

The circumstances of each loss included in the assessment meet the criteria set forth in the decision of *Boerner v. United States*, 30 F. Supp. 635 (S.D. NY, 1939) affirmed 117 F. 2d 337 (CCA 2, 1941) certiorari denied 313 U. S. 537 (1941).

This letter is a demand on you for payment of \$3,425.46, which should be made in the form of a draft or certified check payable to "Disbursing Officer, Post Office Department" and forwarded in the enclosed addressed envelope which requires no postage.

We will await your reply for thirty (30) days. If none is received by December 16, 1969, set-off of the Government's loss will be instituted against funds due you. Thereafter, we will file claim with the bonding company under the blanket position bond covering the period of your employment for any remainder. The manner and terms of salvage by the bonding company would then be a matter for discussion between you and United Bonding Insurance Company.

Sincerely yours,

(Signed) W. J. Cotter
W. J. COTTER
Chief Inspector

FCGreenmcs
(11-12-69)

11-12-69
A27

EXHIBIT 8

Edward V. Morand
COUNSELOR AT LAW

~~XXXXXXXXXX~~
CI-7-0431

1776 Broadway
~~XXXXXXXXXXXXXXXXXXXX~~
NEW YORK 19, N.Y.

November 17, 1969

Post Office Department
Chief Postal Inspector
Washington, D.C. 20260

Re: Jesse P. Stephens
Case No. 105205-SD

Dear Sir:

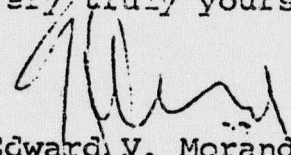
Your letter dated November 13, 1969, signed by Mr. W.J. Cotter, has been turned over to me, as I presently represent Mr. Stephens in a matter before the United States District Court for the Southern District of New York.

I would appreciate receiving a detailed amplified bill of particulars concerning the alleged depredations and whether the same is in cash or merchandise; the date and place of occurrence.

I would likewise appreciate advice from you as to whether this demand is in any way connected with the criminal matter involving Mr. Stephens in the District Court. Furthermore, Mr. Stephens, as of this date, has failed to receive any notice concerning the appeal he initiated.

Your advice on this subject will also be most welcome.

Very truly yours,


Edward V. Morand

EVM:ta

EXHIBIT 9

BEST COPY AVAILABLE

DEC 16 1969

Mr. Edward V. Morand
Counselor at Law
1776 Broadway
New York, New York 10019

RE: Jesse P. Stephens
Case No. 105205-SD

Dear Mr. Morand:

This will acknowledge receipt of your letter dated November 17, 1969 concerning your client, Mr. Jesse P. Stephens.

We are this date forwarding POD Forms 504, evidencing a Government loss of \$8,425.46, to the Postal Inspector in Charge, General Post Office, Room 4102, 33rd and 8th Avenue, New York, New York 10001 for your examination. These forms will be kept at the above address until December 30, 1969 after which they will be returned to this Bureau.

Under controlling judicial decisions, it is not necessary that Mr. Stephens be charged criminally with each individual loss or even prove beyond a reasonable doubt his responsibility for each individual loss in order to hold him civilly liable. It is enough to show that the losses occurred, that he was apprehended committing a similar offense, that he had access to the other mail, and that there was nothing to indicate that the mail was mistreated by any other employee. These factors are considered in the charging of losses and meet the standards set forth in the decision of Bornier v. United States.

The question of appeal and any decision thereafter is a matter that should be taken up with the Assistant Postmaster General, Bureau of Operations, Washington, D. C.

Since you will undoubtedly need additional time to consult with your client concerning his indebtedness and subsequent repayment of the Government's loss we are holding the collection feature in abeyance until January 12, 1970. If this office is not favored with a draft in the amount of \$8,425.46 by that date the action as stated in our demand letter of November 13, 1969 will be taken.

Your cooperation in this matter will be appreciated.

Sincerely yours,

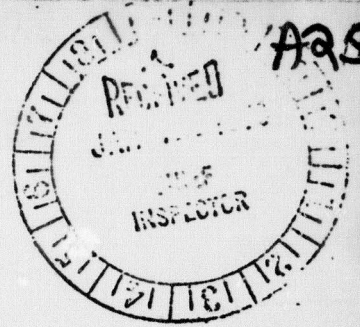
(Signed) W. J. Greer

W. J. Greer
Chief Inspector
FCGreer

EXHIBIT 10

EDWARD V. MORAND
COUNSELLOR AT LAW
1776 BROADWAY
NEW YORK, N. Y. 10019

CI 7-8481
PL 7-5257



January 21, 1970

Mr. W. J. Cotter, Chief Inspector
Post Office Department
Washington, D. C. 20260

Dear Sir:

Reference is made to your letter of December 16, 1969, Re: Jesse P. Stephens, Case # 105205-SD.

Pursuant to your information, I visited the Postal Inspector Mr. Jones prior to December 30th as requested. I reviewed such papers as he had in his possession, and while it clearly indicated that the government had made refunds to a number of persons on the basis of lost mail, there was hardly any evidence whatsoever that this could be chargeable to Mr. Stephens.

Consequently, I find that there has been a complete failure on the part of the government to submit adequate information so as to comply with my demand for a Bill of Particulars. I would suggest that you augment this situation by sending me in detail answers to the questions forwarded to you. Without prejudice to the defendant's position, but with the knowledge that there is no perfect case either on the part of the prosecution or the defense, would the government be willing to suggest a token compromise figure of settlement?

I have advised the District Attorney of my intention to communicate with you, and I am sending him a copy of this letter. In view of the pressure of an impending criminal trial, your very prompt attention would be appreciated.

Very truly yours,

EDWARD V. MORAND

EVM:fkf

EXHIBIT 11

1A355825
408/22/4614 17

NOTIFICATION OF PERSONNEL ACTION
EMPLOYEE SEE GENERAL INFORMATION ON REVERSE

Approved by Civil Service
Commission, November 1968

A26

1-NAME(CAPS) LAST-FIRST-MIDDLE STEPHENS JESSE B		MR.-MISS.-MRS. MR	2-	3-BIRTH DATE (Mo., Day, Yr.) 08/28/13	4-SOCIAL SECURITY NO. 408/22/4614
5-VETERAN PREFERENCE 2 1-NO 2-5-PT. 3-10-PT. DISAB. 4-10-PT. CO:14P. 5-10-PT. OTHER		6-TENURE GROUP		7-SERVICE COMP. DATE (F) 11/02/44	
9A-FEGLI 1-1 2-2 3-3 4-4 5-5 6-6 7-7 8-8 9-9 10-10 11-11 12-12 13-13 14-14 15-15 16-16 17-17 18-18 19-19 20-20 21-21 22-22 23-23 24-24 25-25 26-26 27-27 28-28 29-29 30-30 31-31 32-32 33-33 34-34 35-35 36-36 37-37 38-38 39-39 40-40 41-41 42-42 43-43 44-44 45-45 46-46 47-47 48-48 49-49 50-50 51-51 52-52 53-53 54-54 55-55 56-56 57-57 58-58 59-59 60-60 61-61 62-62 63-63 64-64 65-65 66-66 67-67 68-68 69-69 70-70 71-71 72-72 73-73 74-74 75-75 76-76 77-77 78-78 79-79 80-80 81-81 82-82 83-83 84-84 85-85 86-86 87-87 88-88 89-89 90-90 91-91 92-92 93-93 94-94 95-95 96-96 97-97 98-98 99-99 100-100 101-101 102-102 103-103 104-104 105-105 106-106 107-107 108-108 109-109 110-110 111-111 112-112 113-113 114-114 115-115 116-116 117-117 118-118 119-119 120-120 121-121 122-122 123-123 124-124 125-125 126-126 127-127 128-128 129-129 130-130 131-131 132-132 133-133 134-134 135-135 136-136 137-137 138-138 139-139 140-140 141-141 142-142 143-143 144-144 145-145 146-146 147-147 148-148 149-149 150-150 151-151 152-152 153-153 154-154 155-155 156-156 157-157 158-158 159-159 160-160 161-161 162-162 163-163 164-164 165-165 166-166 167-167 168-168 169-169 170-170 171-171 172-172 173-173 174-174 175-175 176-176 177-177 178-178 179-179 180-180 181-181 182-182 183-183 184-184 185-185 186-186 187-187 188-188 189-189 190-190 191-191 192-192 193-193 194-194 195-195 196-196 197-197 198-198 199-199 200-200 201-201 202-202 203-203 204-204 205-205 206-206 207-207 208-208 209-209 210-210 211-211 212-212 213-213 214-214 215-215 216-216 217-217 218-218 219-219 220-220 221-221 222-222 223-223 224-224 225-225 226-226 227-227 228-228 229-229 230-230 231-231 232-232 233-233 234-234 235-235 236-236 237-237 238-238 239-239 240-240 241-241 242-242 243-243 244-244 245-245 246-246 247-247 248-248 249-249 250-250 251-251 252-252 253-253 254-254 255-255 256-256 257-257 258-258 259-259 260-260 261-261 262-262 263-263 264-264 265-265 266-266 267-267 268-268 269-269 270-270 271-271 272-272 273-273 274-274 275-275 276-276 277-277 278-278 279-279 280-280 281-281 282-282 283-283 284-284 285-285 286-286 287-287 288-288 289-289 290-290 291-291 292-292 293-293 294-294 295-295 296-296 297-297 298-298 299-299 300-300 301-301 302-302 303-303 304-304 305-305 306-306 307-307 308-308 309-309 310-310 311-311 312-312 313-313 314-314 315-315 316-316 317-317 318-318 319-319 320-320 321-321 322-322 323-323 324-324 325-325 326-326 327-327 328-328 329-329 330-330 331-331 332-332 333-333 334-334 335-335 336-336 337-337 338-338 339-339 340-340 341-341 342-342 343-343 344-344 345-345 346-346 347-347 348-348 349-349 350-350 351-351 352-352 353-353 354-354 355-355 356-356 357-357 358-358 359-359 360-360 361-361 362-362 363-363 364-364 365-365 366-366 367-367 368-368 369-369 370-370 371-371 372-372 373-373 374-374 375-375 376-376 377-377 378-378 379-379 380-380 381-381 382-382 383-383 384-384 385-385 386-386 387-387 388-388 389-389 390-390 391-391 392-392 393-393 394-394 395-395 396-396 397-397 398-398 399-399 400-400 401-401 402-402 403-403 404-404 405-405 406-406 407-407 408-408 409-409 410-410 411-411 412-412 413-413 414-414 415-415 416-416 417-417 418-418 419-419 420-420 421-421 422-422 423-423 424-424 425-425 426-426 427-427 428-428 429-429 430-430 431-431 432-432 433-433 434-434 435-435 436-436 437-437 438-438 439-439 440-440 441-441 442-442 443-443 444-444 445-445 446-446 447-447 448-448 449-449 450-450 451-451 452-452 453-453 454-454 455-455 456-456 457-457 458-458 459-459 460-460 461-461 462-462 463-463 464-464 465-465 466-466 467-467 468-468 469-469 470-470 471-471 472-472 473-473 474-474 475-475 476-476 477-477 478-478 479-479 480-480 481-481 482-482 483-483 484-484 485-485 486-486 487-487 488-488 489-489 490-490 491-491 492-492 493-493 494-494 495-495 496-496 497-497 498-498 499-499 500-500 501-501 502-502 503-503 504-504 505-505 506-506 507-507 508-508 509-509 510-510 511-511 512-512 513-513 514-514 515-515 516-516 517-517 518-518 519-519 520-520 521-521 522-522 523-523 524-524 525-525 526-526 527-527 528-528 529-529 530-530 531-531 532-532 533-533 534-534 535-535 536-536 537-537 538-538 539-539 540-540 541-541 542-542 543-543 544-544 545-545 546-546 547-547 548-548 549-549 550-550 551-551 552-552 553-553 554-554 555-555 556-556 557-557 558-558 559-559 560-560 561-561 562-562 563-563 564-564 565-565 566-566 567-567 568-568 569-569 570-570 571-571 572-572 573-573 574-574 575-575 576-576 577-577 578-578 579-579 580-580 581-581 582-582 583-583 584-584 585-585 586-586 587-587 588-588 589-589 590-590 591-591 592-592 593-593 594-594 595-595 596-596 597-597 598-598 599-599 600-600 601-601 602-602 603-603 604-604 605-605 606-606 607-607 608-608 609-609 610-610 611-611 612-612 613-613 614-614 615-615 616-616 617-617 618-618 619-619 620-620 621-621 622-622 623-623 624-624 625-625 626-626 627-627 628-628 629-629 630-630 631-631 632-632 633-633 634-634 635-635 636-636 637-637 638-638 639-639 640-640 641-641 642-642 643-643 644-644 645-645 646-646 647-647 648-648 649-649 650-650 651-651 652-652 653-653 654-654 655-655 656-656 657-657 658-658 659-659 660-660 661-661 662-662 663-663 664-664 665-665 666-666 667-667 668-668 669-669 670-670 671-671 672-672 673-673 674-674 675-675 676-676 677-677 678-678 679-679 680-680 681-681 682-682 683-683 684-684 685-685 686-686 687-687 688-688 689-689 690-690 691-691 692-692 693-693 694-694 695-695 696-696 697-697 698-698 699-699 700-700 701-701 702-702 703-703 704-704 705-705 706-706 707-707 708-708 709-709 710-710 711-711 712-712 713-713 714-714 715-715 716-716 717-717 718-718 719-719 720-720 721-721 722-722 723-723 724-724 725-725 726-726 727-727 728-728 729-729 730-730 731-731 732-732 733-733 734-734 735-735 736-736 737-737 738-738 739-739 740-740 741-741 742-742 743-743 744-744 745-745 746-746 747-747 748-748 749-749 750-750 751-751 752-752 753-753 754-754 755-755 756-756 757-757 758-758 759-759 760-760 761-761 762-762 763-763 764-764 765-765 766-766 767-767 768-768 769-769 770-770 771-771 772-772 773-773 774-774 775-775 776-776 777-777 778-778 779-779 780-780 781-781 782-782 783-783 784-784 785-785 786-786 787-787 788-788 789-789 790-790 791-791 792-792 793-793 794-794 795-795 796-796 797-797 798-798 799-799 800-800 801-801 802-802 803-803 804-804 805-805 806-806 807-807 808-808 809-809 810-810 811-811 812-812 813-813 814-814 815-815 816-816 817-817 818-818 819-819 820-820 821-821 822-822 823-823 824-824 825-825 826-826 827-827 828-828 829-829 830-830 831-831 832-832 833-833 834-834 835-835 836-836 837-837 838-838 839-839 840-840 841-841 842-842 843-843 844-844 845-845 846-846 847-847 848-848 849-849 850-850 851-851 852-852 853-853 854-854 855-855 856-856 857-857 858-858 859-859 860-860 861-861 862-862 863-863 864-864 865-865 866-866 867-867 868-868 869-869 870-870 871-871 872-872 873-873 874-874 875-875 876-876 877-877 878-878 879-879 880-880 881-881 882-882 883-883 884-884 885-885 886-886 887-887 888-888 889-889 890-890 891-891 892-892 893-893 894-894 895-895 896-896 897-897 898-898 899-899 900-900 901-901 902-902 903-903 904-904 905-905 906-906 907-907 908-908 909-909 910-910 911-911 912-912 913-913 914-914 915-915 916-916 917-917 918-918 919-919 920-920 921-921 922-922 923-923 924-924 925-925 926-926 927-927 928-928 929-929 930-930 931-931 932-932 933-933 934-934 935-935 936-936 937-937 938-938 939-939 940-940 941-941 942-942 943-943 944-944 945-945 946-946 947-947 948-948 949-949 950-950 951-951 952-952 953-953 954-954 955-955 956-956 957-957 958-958 959-959 960-960 961-961 962-962 963-963 964-964 965-965 966-966 967-967 968-968 969-969 970-970 971-971 972-972 973-973 974-974 975-975 976-976 977-977 978-978 979-979 980-980 981-981 982-982 983-983 984-984 985-985 986-986 987-987 988-988 989-989 990-990 991-991 992-992 993-993 994-994 995-995 996-996 997-997 998-998 999-999 1000-1000 1001-1001 1002-1002 1003-1003 1004-1004 1005-1005 1006-1006 1007-1007 1008-1008 1009-1009 1010-1010 1011-1011 1012-1012 1013-1013 1014-1014 1015-1015 1016-1016 1017-1017 1018-1018 1019-1019 1020-1020 1021-1021 1022-1022 1023-1023 1024-1024 1025-1025 1026-1026 1027-1027 1028-1028 1029-1029 1030-1030 1031-1031 1032-1032 1033-1033 1034-1034 1035-1035 1036-1036 1037-1037 1038-1038 1039-1039 1040-1040 1041-1041 1042-1042 1043-1043 1044-1044 1045-1045 1046-1046 1047-1047 1048-1048 1049-1049 1050-1050 1051-1051 1052-1052 1053-1053 1054-1054 1055-1055 1056-1056 1057-1057 1058-1058 1059-1059 1060-1060 1061-1061 1062-1062 1063-1063 1064-1064 1065-1065 1066-1066 1067-1067 1068-1068 1069-1069 1070-1070 1071-1071 1072-1072 1073-1073 1074-1074 1075-1075 1076-1076 1077-1077 1078-1078 1079-1079 1080-1080 1081-1081 1082-1082 1083-1083 1084-1084 1085-1085 1086-1086 1087-1087 1088-1088 1089-1089 1090-1090 1091-1091 1092-1092 1093-1093 1094-1094 1095-1095 1096-1096 1097-1097 1098-1098 1099-1099 1100-1100 1101-1101 1102-1102 1103-1103 1104-1104 1105-1105 1106-1106 1107-1107 1108-1108 1109-1109 1110-1110 1111-1111 1112-1112 1113-1113 1114-1114 1115-1115 1116-1116 1117-1117 1118-1118 1119-1119 1120-1120 1121-1121 1122-1122 1123-1123 1124-1124 1125-1125 1126-1126 1127-1127 1128-1128 1129-1129 1130-1130 1131-1131 1132-1132 1133-1133 1134-1134 1135-1135 1136-1136 1137-1137 1138-1138 1139-1139 1140-1140 1141-1141 1142-1142 1143-1143 1144-1144 1145-1145 1146-1146 1147-1147 1148-1148 1149-1149 1150-1150 1151-1151 1152-1152 1153-1153 1154-1154 1155-1155 1156-1156 1157-1157 1158-1158 1159-1159 1160-1160 1161-1161 1162-1162 1163-1163 1164-1164 1165-1165 1166-1166 1167-1167 1168-1168 1169-1169 1170-1170 1171-1171 1172-1172 1173-1173 1174-1174 1175-1175 1176-1176 1177-1177 1178-1178 1179-1179 1180-1180 1181-1181 1182-1182 1183-1183 1184-1184 1185-1185 1186-1186 1187-1187 1188-1188 1189-1189 1190-1190 1191-1191 1192-1192 1193-1193 1194-1194 1195-1195 1196-1196 1197-1197 1198-1198 1199-1199 1200-1200 1201-1201 1202-1202 1203-1203 1204-1204 1205-1205 1206-1206 1207-1207 1208-1208 1209-1209 1210-1210 1211-1211 1212-1212 1213-1213 1214-1214 1215-1215 1216-1216 1217-1217 1218-1218 1219-1219 1220-1220 1221-1221 1222-1222 1223-1223 1224-1224 1225-1225 1226-1226 1227-1227 1228-1228 1229-1229 1230-1230 1231-1231 1232-1232 1233-1233 1234-1234 1235-1235 1236-1236 1237-1237 1238-1238 1239-1239 1240-1240 1241-1241 1242-1242 1243-1243 1244-1244 1245-1245 1246-1246 1247-1247 1248-1248 1249-1249 1250-1250 1251-1251 1252-1252 1253-1253 1254-1254 1255-1255 1256-1256 1257-1257 1258-1258 1259-1259 1260-1260 1261-1261 1262-1262 1263-1263 1264-1264 1265-1265 1266-1266 1267-1267 1268-1268 1269-1269 1270-1270 1271-1271 1272-1272 1273-1273 1274-1274 1275-1275 1276-1276 1277-1277 1278-1278 1279-1279 1280-1280 1281-1281 1282-1282 1283-1283 1284-1284 1					

STATE OF Connecticut
COUNTY OF Fairfield

ss:

I, Jesse B. Stephens

, living at the Danbury Correctional Institution,

Danbury, Conn

, being duly sworn, make this

statement of my own free will, without any promises or assurances: I have read the 752*B Appeal File as presently constituted by the US Civil Service Commission. I have read the file to the best of my ability as I have no legal counsel or representative available to me at this time.

I hereby request a Hearing by the US Civil Service Commission in this matter at the earliest possible time. I am confined to the Danbury Correctional Institution and will be until the middle of November, 1971. I request that the hearing be held in New York City after I have been released and have time to obtain the services of legal counsel and to prepare my side of the appeal.

I maintain that my removal was unfair and improper because of the manner in which the Post Office Hearing relative to my removal was held. The hearing was held on Feb. 4, 1971 and I was present. I was accompanied by Mr William Morand, Attorney at Law. Mr Morand indicated that he had withdrawn from my case for reasons of ill health and also because I could not afford to pay him for his services. Therefore I had no representative. I had been convicted in November, 1970 in US District Court on a charge of removing mail from normal channels. I was sentenced on January 8, 1971. I then appealed the conviction and sentence. The appeal was pending as of Feb. 4, 1971. I had petitioned the Appeals Court for counsel at the time of appeal and counsel had not yet been appointed. I tried to explain all of this to the Hearing Examiner of the Post Office and had asked for a continuance in view of these facts. The request for a continuance was denied and the hearing was held. Because I had no counsel, I left and was therefore denied the right to hear my accusers and to cross examine them.

I further maintain that the 8/12/71 Form 50 proposal of the Post Office to withhold all monies due me because of "known government losses" is improper in that there is no indication in the hearing summary, appeal file or the court proceedings that there are Known governmental losses chargeable to me.

I also maintain that keeping me on suspension from 3/31/69 to my removal on 8/12/71 was improper and illegal. This suspension prevented me from obtaining employment and other benefits. I was not advised during my period of suspension as to whether I had life insurance coverage provided for Federal Employees or if the insurance had been dropped. This lack of knowledge relative to my health benefit insurance also applies. I also maintain that the 8/12/71 Form 50 makes no provision for paying me for the accrued annual leave due me as of the time that I was suspended.

Page 1 of 3 pages.

Initials: JSB

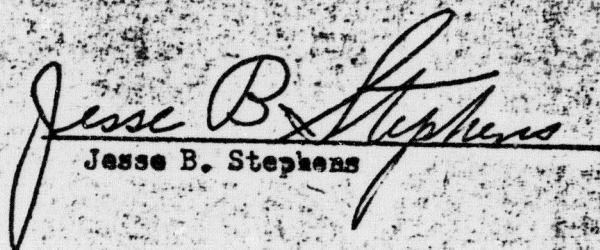
I wish to state further that Edward V. Moran is not my attorney and has not been since he represented me in Federal District Court in November 1970/ I dismissed him and paid him off at that time. I then asked that legal counsel be provided by the court in connection with my appeal. An attorney was appointed and did represent me in the appeal. Since Feb. 4, 1971, I have had no contact with Moran and any action or correspondence that he has performed has been done without my knowledge.

Page 2 of 3 Pages
BS

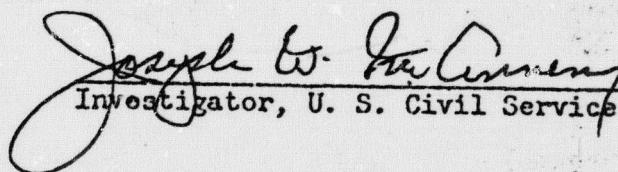
BS

A29

I have read the above statement consisting of 2 pages, which is true and complete to the best of my knowledge and belief. I further understand that the information I have given is not to be considered confidential and that it may be discussed with or shown to the interested parties.


Jesse B. Stephens

Subscribed and sworn to before me
at Danbury, Conn
this 5th day of October, 1971


Investigator, U. S. Civil Service Commission

Page 3 of 3 pages.

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Standard Form No. 2805
6 GAO 5000
2805-104

REQUEST FOR RECOVERY OF DEBT DUE THE UNITED STATES
(Civil Service Retirement System)

Director, Bureau of Retirement and Insurance
United States Civil Service Commission
Washington, D.C. 20415

In order to liquidate an indebtedness to the United States, it is requested that the gross amount of the debt as shown be set off against the individual account in the Civil Service Retirement and Disability Fund of the former employee named herein. The individual retirement account, Form 2806, of the former employee is (is not) attached.

When action has been completed, check should be forwarded to:

N. Y. Postal Data Center
Main Post Office Building
New York, N.Y. 10099

NOTE TO AGENCY.—The address shown above should be that of the office designated by the employing agency to receive evidence of the liquidation of the debt.

NAME OF FORMER EMPLOYEE STEPHENS JESSE B.		DATE OF BIRTH 8/28/13
DATE OF TERMINATION OF SERVICE 8/22/71	DEPARTMENT OR ESTABLISHMENT Post Office Department	
LOCATION OF EMPLOYMENT New York, N.Y.	AMOUNT OF INDEBTEDNESS \$ 7,731.29	
REASON FOR INDEBTEDNESS THEFT OF MAIL		
APPROPRIATION AND/OR FUND (TITLE AND SYMBOL NUMBER) 1262 -- Accounts Receivable arising from reimbursements and Refunds to Appropriations.		
DISBURSING OFFICER (NAME AND SYMBOL NUMBER) Alfred Riccio 5226		
I hereby certify that the indebtedness identified above is properly due the United States and that all other means of recovery have been exhausted. C. B. Hamilton General Ledger (Signature) Postal Data Center Post Office Department New York, New York 10099 9/22/71 (DATE)		

UNITED STATES CIVIL SERVICE COMMISSION
REPORT OF ACTION ON REQUEST FOR RECOVERY

- ☒ RETIREMENT ACCOUNT IS AVAILABLE FOR IMMEDIATE SET-OFF. YOU WILL BE NOTIFIED WHEN RECOVERY HAS BEEN COMPLETED. **March 1-14-72**
- ☐ RETIREMENT DEDUCTIONS FOR LAST KNOWN PERIOD OF SERVICE HAVE BEEN RETURNED. BOTH COPIES OF REQUEST ARE RETURNED.
- ☐ RETIREMENT ACCOUNT FOR LAST KNOWN PERIOD OF SERVICE HAS NOT BEEN RECEIVED IN THE COMMISSION. REQUEST FOR RECOVERY HAS BEEN INDEXED AND FILED FOR POSSIBLE FUTURE ACTION.
- ☒ DEBTOR HAS A VESTED TITLE TO ANNUITY AND HAS NOT FILED AN APPLICATION FOR BENEFITS. REQUEST FOR RECOVERY HAS BEEN INDEXED AND FILED FOR POSSIBLE FUTURE ACTION.
- ☐ THE AMOUNT OF INDEBTEDNESS IS LESS THAN \$5.00. BOTH COPIES OF REQUEST ARE RETURNED AND SET-OFF WILL NOT BE MADE BECAUSE THE COST OF RECOVERY WOULD EXCEED THE AMOUNT OF INDEBTEDNESS.
- ☐ DEBTOR HAS NO AMOUNT TO HIS CREDIT IN THE RETIREMENT FUND. BOTH COPIES OF REQUEST ARE RETURNED.
- ☐ WE ARE UNABLE TO IDENTIFY THE DEBTOR FROM THE DATA FURNISHED. IF YOU WILL FILL IN THE DATE OF BIRTH AND RETURN BOTH COPIES OF THE REQUEST, ANOTHER ATTEMPT WILL BE MADE.
- ☐ DATA YOU HAVE FURNISHED INDICATES THAT DEBTOR IS NOW AN EMPLOYEE, AND THERE IS NO SHOWING THAT ATTEMPTS TO RECOVER THROUGH EMPLOYING AGENCY HAVE BEEN EXHAUSTED. BOTH COPIES OF REQUEST ARE RETURNED.
- ☐ OTHER (Specify)

BUREAU OF RETIREMENT AND INSURANCE
Alfred Riccio 1-12-8-72
EXAMINER

UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF RETIREMENT, INSURANCE, AND OCCUPATIONAL HEALTH
WASHINGTON, D.C. 20415

A32

1-14-72

105205-SD

Jesse B. Stephens
300 E. 159th St. apt 10
Bronx, N.Y. 10451

RCR:

CSR- 082813

We have been requested to withhold from your retirement refund the amount of your debt to the United States, as shown below:

REASON FOR DEBT <i>Theft of mail</i>	
CLAIMANT AGENCY Postal Data Center Main P.O. Bldg. New York, N.Y. 10003	AMOUNT OF RETIREMENT CREDIT \$ 6606.02 + 232.81 <i>INTEREST</i> TOTAL - \$6838.83
	AMOUNT OF DEBT \$ 7731.29

Since the debt is more than your retirement credit, no money can be refunded to you. Any questions you may have concerning this matter should be presented to the agency shown above, rather than to the U. S. Civil Service Commission.

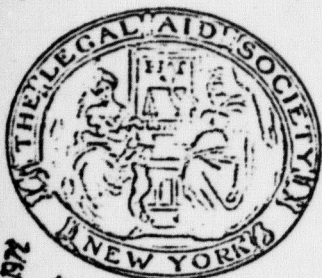
Mary J. Gleason

Mary J. Gleason
Chief, Refund and Deposit Section
Claims Division

EXHIBIT 16

OVER

OVER



THE LEGAL AID SOCIETY

CIVIL BRANCH APPEALS BUREAU

267 WEST 17TH STREET
NEW YORK, N. Y. 10011

TELEPHONE:
691-8320

KALMAN FINKEL, ATTORNEY-IN-CHARGE

ORISON S. MARDEN
Chairman of the Board

LEON SILVERMAN
President

HAROLD H. HEALY, JR.
Treasurer

SAMUEL W. MURPHY, JR.
Secretary

EDWARD Q. CARR, JR.
Attorney-in-Chief

MRS. MARY B. TARCHER
Assistant Attorney-in-Chief

May 24, 1972

U.S. Postal Service
Bureau of Chief Postal Inspector
Washington, D.C.

Dear Sirs:

I am writing to you on behalf of my client, Jesse B. Stephens (Soc. Sec. #403-22-4614). Mr. Stephens was employed by the Postal Service from 1-24-48 to 8-12-71, when he was suspended and removed from the position of Distribution Window Clerk, PS Level 5, Step 11, \$7,898 per annum.

Mr. Stephens has several money claims against the Postal Service. He would appreciate your prompt clarification and review of why these sums have not been forthcoming and final agency determination with respect to the following amounts:

- a. The sum of \$5838.83 represents the refund to which Mr. Stephens is entitled as a result of the termination of his employment. This figure includes \$5506.02, his contribution to the Retirement Fund, and \$232.81 interest on this amount.
- b. The sum of \$300.00 was due to Mr. Stephens as a bonus at the time of his termination.
- c. The sum of \$544.05 represents the sum due to Mr. Stephens as terminal leave at the time of his termination.

p. 2

To: U.S. Postal Service

May 24, 1972

The above amounts are all being withheld on the basis of an alleged indebtedness of Mr. Stephens in the amount of \$7731.29. My client categorically denies the alleged indebtedness. The Postal Service has not given him appropriate notice of the charges against him nor an opportunity to challenge these claims.

I am enclosing papers which may be helpful to your final determination of Mr. Stephens' account. With respect to the retirement fund credit, the U.S. Civil Service Commission, Bureau of Retirement, Insurance, and Occupational Health has referred Mr. Stephens to the Postal Service because of the alleged indebtedness. (Enclosure dated 1-14-72) Inspector Howd of Grand Central Post Office suggested that I write to your office. Regarding the other two amounts, some correspondence is enclosed; however, a conversation I had on May 23, 1972 with Mr. Martin Kalkstein of the Payroll Unit of the Postal Data Center confirmed the fact that these sums have also been withheld to be applied to the alleged indebtedness.

Assuming that the Postal Service has the right to offset amounts due it from an employee, such offset violates the elements of due process when it is made in so arbitrary a manner as revealed in this case. Mr. Stephens was not given notice by the Postal Service prior to the contemplated offset nor was he given an opportunity to fully contest the government's claims against him prior to the withholding of the sums involved. If we receive no word from the Postal Service in the next three weeks that a final determination of Mr. Stephens' claim has been reached or that a hearing will be afforded to Mr. Stephens, our office will assume that a resort to the courts will be necessary for a prompt resolution of all of the issues in the case.

Sincerely,

*Anita F. Barrett*Anita F. Barrett
Associate Appellate Counsel

115

cc: Postal Data Center
Main P.O. Building - New York, N.Y. 10099

p. 3

Inspector Howd
Box 68
Grand Central PO
New York, N.Y. 10017

Martin Kalkstein
New York Postal Data Center
Payroll Unit
Room 4560
New York, N.Y. 10099

/ Mr. Bert Ganzer
Appeals Examiner
United States Civil Service Commission
New York Region
Federal Building
26 Federal Plaza
New York, N.Y. 10007

Mr. Jesse B. Stephens
300 East 159 Street
Apartment 1D
Bronx, New York 10451

AFB/rs
Encs.

A36



ASSISTANT POSTMASTER GENERAL
INSPECTION SERVICE

Washington, DC 20260

JUN 3 1972

Ms. Anita F. Barrett
Associate Appellate Counsel
The Legal Aid Society and
Branch Appeal Bureau
267 West 17th Street
New York, New York 10011

RE: Jesse P. Stephens
Case No. 105205-SD

Dear Ms. Barrett:

This refers to your letter dated May 24, 1972 in behalf of your client Mr. Jesse P. Stephens. It concerns the withholding of funds due Mr. Stephens as a result of his depredations on the mail.

Review of the case file reflects that Mr. Stephens was initially indebted to the Government in the amount of \$8,425.46. On February 24, 1972 this Service was advised that the sum of \$7,533.00 had been set-off from funds due Mr. Stephens. This amount included the amount of \$240.00 final salary due, unused leave due in the amount of \$454.17 and Retirement Fund Account in the amount of \$6,838.83. On completion of set off there remained a balance due of \$892.46 for which demand has been made on the bonding company under the blanket position bond covering the period of Mr. Stephens' employment. This claim is still pending.

The facts in this case are that an investigation was initiated early in March 1969 based on numerous reports of the loss of registered articles at the 36th Street Facility of the New York, New York, post office. On March 15 Mr. Stephens, who was assigned in the Registry Section, was developed as a suspect. He was observed acting in a suspicious manner in that he opened two registered articles, examined the contents and resealed the parcels. These parcels were later intercepted, delivered to the addressees on March 17 and the wrappers recovered.

On March 22, Mr. Stephens was apprehended after he was observed to segregate a registered parcel placed in the mail stream and subsequently remove the contents. At that time he was taken to his locker where the contents were removed, placed in shopping bags and taken with him to the Postal Inspector's Office. A Warning and Waiver Form was given to Mr. Stephens which he read but refused to sign. Search of his person disclosed that he was wearing

EXHIBIT 18

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two pairs of trousers and in the rear pocket of the inner trousers the contents were found of the registered parcel.

We have forwarded to the bonding company POD Forms 504, Inquiry Regarding Claim for Insured/C.O.D./Registered Article, which represent payment of indemnity to postal patrons by the Postal Service for the loss of articles contained in registered parcels which would have been received at the 36th Street Facility during the course of Mr. Stephens' employment. Should you desire to review these forms, we will make them available to the Office of the Postal Inspector in Charge, New York, for your review.

Under controlling judicial decisions, it is not necessary that Mr. Stephens be charged criminally with each individual loss or even prove beyond a reasonable doubt his responsibility for each individual loss in order to hold him civilly liable. It is enough to show that the losses occurred, that he was apprehended committing a similar offense, that he had access to the other mail, and that there was nothing to indicate that the mail was mistreated by any other employee. All these factors were present in your client's case and the evidence met the standards set forth in the decision of Boerner v. United States, 30 F. Supp. 635 (USDC ED NY, 1939), affirmed 117 F. 2d 387 (CCA 2, 1941) certiorari denied 313 U. S. 587 (1941).

On November 13, 1969, a letter of demand for the sum of \$8,425.46 was directed to Mr. Stephens. Therein it was stipulated that unless we had heard from him within 30 days, set-off action would be initiated and if necessary demand on surety would be accomplished for any remaining indebtedness after set-off was completed. *duant*

Mr. Stephens employed the services of Mr. Edward V. Morand, Counselor at Law, 1776 Broadway, New York, New York. At his request we held the collection feature of this case in abeyance until such time as Mr. Stephens' appeal of removal from the rolls of the Postal Service was acted on. A further request was made and granted to the U. S. Attorney that until such time as the criminal prosecution feature had been resolved, no action would be taken on the appeal of removal. Mr. Stephens was sentenced on January 8, 1971 to serve six months imprisonment. He appealed the conviction and was remanded on bail. His appeal of sentence was denied, and he was ordered to surrender himself on June 7, 1971 to begin serving his sentence. On August 12, 1971, after a hearing on Mr. Stephens' appeal of removal from the Postal Service, he was officially removed.

On September 21, 1971 action was initiated to off-set from money due Mr. Stephens the amount of Government losses chargeable to his depredations.

The statutory requirements for this action are embodied in Title 5, United States Code, Sections 5511 and 5512, which make it mandatory that when an employee is separated for cause, any pay accruing to him shall be applied in whole or in part to the satisfaction of any claim or indebtedness due the United States.

A38

3

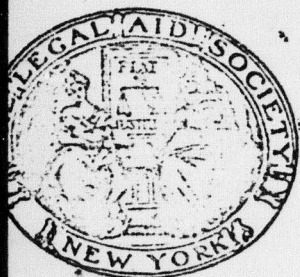
As is shown above, Mr. Stephens was given the opportunity and did contest the government's claim against him prior to the set off of \$7,533.00.

We trust this information satisfies your inquiry.

Sincerely,

W. J. Cotter

William J. Cotter
Assistant Postmaster General
Inspection Service



TELEPHONE:
991-4600

ASSOCIATE ATTORNEY-IN-CHARGE
MICHAEL D. HAMPDEN

THE LEGAL AID SOCIETY

CIVIL BRANCH APPEALS BUREAU

BRONX OFFICE
1029 EAST 163RD STREET
BRONX, NEW YORK 10459

KALMAN FINKEL, ATTORNEY-IN-CHARGE

ORISON S. MARDEN
Chairman of the Board

LEON SILVERMAN
President

HAROLD H. HEALY, JR.
Treasurer

SAMUEL W. MURPHY, JR.
Secretary

EDWARD Q. CARR, JR.
Attorney-in-Chief

MRS. MARY B. TARCHER
Assistant Attorney-in-Chief

November 3, 1972

United States Civil Service Commission
Bureau of Retirement, Insurance and
Occupational Health
Washington, D.C. 20415

Dear Sirs;

We represent Jesse B. Stephens (Soc. Sec. #408-22-4614). Mr. Stephens was employed by the Postal Service from January 24, 1948 to August 12, 1971 when he was removed from the position of window clerk, PS level 5, Step 11, \$7,895 per annum at the 36th Street Post Office in Manhattan.

In October 1971, following his removal from the Postal Service, Mr. Stephens filed an application with the Bureau of Retirement Insurance and Occupational Health for a refund of his contribution to the Civil Service Retirement Fund. Mr. Stephens was unaware that since he had completed 5 years of service he could leave his contribution in the fund and on reaching 62 years of age would receive an annuity (Civil Service Retirement Act §8A, FPM Sup 831-1 subchapter S12). Had Mr. Stephens been informed of this right he would not have filed for a retirement refund.

(At the time of removal the Postal Service is required to instruct the employee to wait until three months before he attains age 62 to file his application for retirement (FPM Sup 831-1, subchapter S12). The Postal Service did not comply with this directive here.)

EXHIBIT 19

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The Postal Service has through its failure to inform our client of his rights effectively prevented him from exercising them. Accordingly we request that his application for a retirement refund (he has received no payment as of the date) be considered withdrawn and his right to an annuity reinstated.

If we do not hear from you within 10 days we will be forced totake the matter to the courts.

Very truly yours,

Elaine C Buck

Elaine C. Buck
Associate Appellate Counsel

A41



UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF RETIREMENT, INSURANCE, AND OCCUPATIONAL HEALTH
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

RCZ:LAT:rmc

YOUR REFERENCE

November 22, 1972

Elaine C. Buck
Associate Appellate Counsel
The Legal Aid Society
Civil Branch Appeals Bureau
1029 East 163rd St.
Bronx, N.Y. 10459

Dear Ms. Buck:

This is in reference to your letter of November 3, 1972 in the interest of Mr. Jesse B. Stephens regarding benefits payable from the Civil Service Retirement System.

Mr. Stephens once had an annuity right under the retirement law, but that right has been forfeited. At time of his separation from the Post Office on August 12, 1971, Mr. Stephen's past Federal service entitled him to a choice of two benefits: (1) a refund in full of retirement deductions plus interest, which would terminate all retirement rights; (2) a lifetime annuity commencing at age 62, if all retirement deductions were left in the fund.

The record shows Mr. Stephens applied for a refund of the deductions and interest credited to his account in the retirement fund. Enclosed is a photocopy of Mr. Stephen's application for refund. As you will note under "Notice to Applicant", the form states that "If you have more than 5 years of service, you may be entitled to annuity rights which will be forfeited by payment of this refund....".

The Post Office Department requested that we withhold \$7,731.29 from the money payable to Mr. Stephens to recover a debt due the United States for theft of mail. When Mr. Stephens applied for a refund, this government claim had to be withheld from the refund payable. Since his retirement credit was only \$6,606.02, this money was paid to the New York Postal Data Center to pay a portion of their claim.

By applying for a refund in lieu of the future annuity, Mr. Stephens ended his rights under the Civil Service Retirement System. There is no way we might pay any further benefit in the case.

Sincerely yours,

W. L. Schlappi
W. L. Schlappi
Chief of Section

Enclosure



TELEPHONE:
991-4600

ASSOCIATE ATTORNEY-IN-CHARGE
MICHAEL D. HAMPDEN

THE LEGAL AID SOCIETY

CIVIL BRANCH
APPEALS BUREAU

BRONX OFFICE
1029 EAST 163RD STREET
BRONX, NEW YORK 10459

KALMAN FINKEL, ATTORNEY-IN-CHARGE

ORISON S. MARDEN
Chairman of

LEON SILVERMAN

HAROLD H. HEALY, J

SAMUEL W. MURPHY

EDWARD Q. CARR, Jr.
Attorney

MRS. MARY B. TARC
Assistant Attorney

A42

November 6, 1972

Comptroller General of the
United States
441 G. Street
N. W., Washington, D.C. 20548

RECEIVED
GAG - INDEX & FILES

1972 NOV 9 PM 3 18

Dear Sir;

We represent Jesse B. Stephens (Soc. Sec. #408-22-4614). Mr. Stephens was employed by the United States Postal Service from January 24, 1948 to August 12, 1971 when he was dismissed as a window clerk at the 36th Street Facility of the New York City Post Office. Mr. Stephens was charged with and found guilty of removing a package from the mail on March 22, 1969.

The United States Postal Service owes Mr. Stephens the following amounts of money:

1. \$6,838.83 which represents contributions to the Civil Service Retirement Fund.
2. A \$300.00 bonus.
3. \$544.05 in terminal leave.

Although the Postal Service concedes that these sums are due Mr. Stephens, it has offset these amounts against \$8,425.46 which it claims is owed the United States by our client. Mr. Stephens denies any indebtedness.

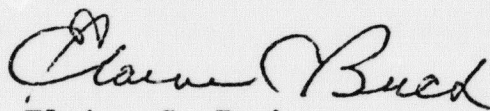
Apparently, the Postal Service is holding Mr. Stephens responsible for all the losses suffered by the 36th Street Facility during the period of his employ. Mr. Stephens has never been given notice of the specific charges against him or an opportunity to challenge them.

A43

Assuming that the Postal Service can offset amounts due it from an employee, the method used here violates the Due Process Clause of the United States Constitution. Mr. Stephens should have been given notice of the specific charges against him and an opportunity to contest them prior to the offset.

Pursuant to FPM Sup 831-1, S19-S we request that you annul the offset action taken by the Postal Service and remand the matter for a hearing. If we receive no word from you within 10 days we will assume that a resort to the courts will be necessary.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Elaine C. Buck".

Elaine C. Buck
Associate Appellate Counsel



A44

LAW DEPARTMENT
Washington, DC 20260

FEB 22 1973

Ms. Elaine C. Buck
Associate Appellate Counsel
The Legal Aid Society
Civil Branch
1029 East 163rd Street
Bronx, New York 10459

Dear Ms. Buck:

Your letter of November 6, 1972 to the Controller General of the United States, pertaining to Jesse B. Stephens, was forwarded to us by the General Accounting Office for answer. The delay in responding to your letter was due to difficulty in locating Mr. Stephens' records.

Postal Service files show that in December 1969 or January 1970 Mr. Stephens' attorney, Edward V. Morand, reviewed the claims for losses of registered mail which have been attributed to Mr. Stephens. Such a review legally sufficed to apprise Mr. Stephens fully of the specific evidence used to ascertain the amount of the set off against his retirement fund. Moreover, in his letter of May 24, 1972, to Ms. Anita F. Barrett of your office, Chief Inspector Cotter, Assistant Postmaster General - Inspection Service, explained that the evidence was evaluated in light of the standards set forth in Boerner v. United States, 30 F. Supp 635 (E.D. N.Y., 1939), aff'd, 117 F. 2d 387 (2d Cir. 1941), cert. denied, 317 U.S. 587. We note that the rationale of Boerner was recently applied by the Fourth Circuit in Elmore v. United States, 465 F. 2d 1231 (4th Cir. 1972).

In all of the circumstances of this matter, it is our view that Mr. Stephens has been given ample notice of the legal and factual basis for the set off against his pay and retirement funds. To date, Mr. Stephens has presented nothing to show that the set off was improper in any way.

EXHIBIT 22

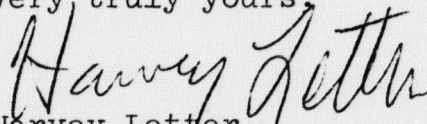
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He has not controverted any material fact relied on by the Postal Service. Nor has he suggested that the Boerner standards do not cover this matter or that they have been misapplied.

If you submit a presentation as counsel for Mr. Stephens pursuant to applicable legal principles, we shall give it most serious consideration.

Very truly yours,



Harvey Letter
Assistant General Counsel
Labor Law Division

OPINION AND FINDINGS OF THE DISTRICT COURT

17 THE COURT: I am going to tell you right now I am
18 finding in favor of the government. I have analyzed the
19 evidence as we went along. I made a chart as we went along.
20 I will find in favor of the government. Let me put my
21 findings very briefly on the record.

22 This is an action which has been tried by the
23 court without a jury and the following are my findings of
24 fact and conclusions of law:

25 Although the action originally had certain other

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2 claims, by the time of the trial which has just been held
3 the claims of the parties boil down to the following:

4 Plaintiff, a former employee of the former Post Office
5 Department and what became the postal service in April 13,
6 1971, is claiming in this action certain amounts allegedly
7 due him from the government by way of compensation.

8 Because of a problem involving mail theft, the
9 plaintiff was suspended from his employment in the Post
10 Office Department in March, 1969, and was later finally
11 terminated.

12 The evidence shows that the government would
13 owe the plaintiff the following sums but for the counterclaim
14 of the government, which I will mention shortly.

15 The government would owe plaintiff a lump sum
16 amount on retirement and disability of \$6,838.83. The
17 government would owe the plaintiff salary of \$240. The
18 government would owe the plaintiff unused annual leave
19 amounting to \$454.17. The total of these amounts is \$7,533.

20 Certain additional amounts of unused annual
21 leave and an amount of bonus are claimed by plaintiff,
22 but there is no evidence to support such additional claims.

23 In addition, plaintiff claims to be entitled
24 to an annuity in lieu of the lump sum retirement of \$6,838.83.
25 For reasons discussed a few minutes ago with counsel, I reject

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2 the claim that plaintiff is entitled to an annuity.

3 On November 7, 1971, the plaintiff filed an
4 application for refund of retirement deductions and as a
5 result of that application the Civil Service fund became
6 indebted to the plaintiff for the lump sum. That lump sum
7 has been seized by the postal service in satisfaction of
8 certain amounts allegedly owed by the plaintiff to the
9 postal service. In any event, I find that the indebtedness
10 of the government to plaintiff is in the form of the lump
11 sum payment rather than the annuity.

12 What plaintiff is seeking in this action is to
13 have paid to him this unpaid indebtedness on the part
14 of the government. At least, that is what is being sought
15 as the issues are now tried, although, as I indicated,
16 certain other issues were raised initially in the action, but
17 have been dispensed with.

18 The government counterclaims, claiming that an
19 amount greater than the \$7,533 was and is owed by the
20 plaintiff to the government under the following circumstances:

21 The government contends that it was required
22 to honor a substantial amount of claims of persons who had
23 suffered losses of registered mail items and that as a result
24 of those claims the government is entitled to recover against
25 the person responsible for those losses. The government contend

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2 that the plaintiff is responsible for those losses. It is
3 conceded that if the government has sustained its burden
4 of proof of the plaintiff's responsibility that the plaintiff
5 is indeed indebted to the government for the amounts of
6 the claims paid.

7 I hold that the government has proved sufficiently
8 that the plaintiff was responsible for 11 instances of theft
9 of registered items, commencing January, 1966, and running
10 through March, 1969, and that the plaintiff is indebted for
11 the total amount paid by the government on such claims,
12 namely, \$7,620.

13 The basis for my holding is as follows:

14 The evidence demonstrates that on March 15, 1969,
15 pursuant to a special investigation, the plaintiff was ob-
16 served in the registration cage of the 36th Street postal
17 station in New York City to have reached into registered
18 mail pouches in a suspicious manner. Later two parcels were
19 discovered to have been slit open. However, the contents
20 of these parcels were apparently not taken out of the
21 parcels.

22 Further observance was made of the plaintiff
23 on March 22, 1969. In advance of this date a test parcel
24 containing certain jewelry had been prepared. As a result
25 of observations and seizure of materials on March 22, 1969,

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[220]

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2 it was discovered that plaintiff on that date reached into
3 a registered mail pouch, slit open the test parcel, removed
4 the jewelry from it and placed the jewelry inside Bermuda
5 shorts which were underneath plaintiff's outer pants.

6 It appears that the plaintiff's razor type knife
7 was found in the registry cage where he was observed to have
8 placed it after usage.

9 It appears that this led to a renewed investigation
10 of certain losses of registered mail items which had occurred
11 over some period of time prior to the March, 1969, incident.

12 Incidentally, the plaintiff was arrested on
13 March 22, 1969, and was subsequently convicted in this
14 court after trial of mail embezzlement. He served a prison
15 sentence for that crime. The conviction was sustained
16 on appeal. The criminal case related solely to the test
17 parcel. The present case relates not to the test parcel,
18 but to a number of registered mail losses occurring prior
19 to the incident involving the test parcel.

20 There is no direct evidence by way of observation
21 or otherwise of plaintiff's connection with the losses
22 which I am referring to. The evidence is entirely circum-
23 stantial. However, in my view it is sufficient to show at
24 least by a preponderance of the evidence that plaintiff
25 has responsibility for the losses that I am referring to. I am

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2 referring to 11 specific losses occurring from January, 1966,
3 through early March, 1969. Each of these losses involved
4 jewelry. In each case I find that the circumstantial evidence
5 taken together, taken as a whole, shows that the losses
6 occurred in the registry section of the 36th Street Post
7 Office at times when plaintiff was employed in that registry
8 section. I further find that the circumstantial evidence
9 taken as a whole demonstrates that plaintiff was responsible
10 for these losses and stole the jewelry which was found to be
11 missing.

12 The dates of the losses are as follows: January 26
13 1966; June 6, 1967; December 2, 1967; June 25, 1968;
14 September 25, 1968; November 27, 1968; a date which is
15 approximately December 7th or 9th, 1968; another item or a
16 second item involving the dates December 7th or 9th, 1968;
17 a date which is about January 18, 1969; a date which is about
18 February 15th or 17th, 1969; and March 11, 1969.

19 No other employee at the 36th Street Station or
20 particularly in the registry cage of that station has been
21 shown to have any involvement with any of these losses and the
22 there is no reason to believe that any such other employee
23 was involved in mail thefts at that location during this
24 period. No other employee was observed to be conducting
25 the type of activity which plaintiff was found to be

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2 conducting on March 22, 1969. After plaintiff's arrest
3 on March 22, 1969, and his removal from that employment,
4 this type of loss ceased.

5 The government is entitled to judgment on its
6 counterclaim in the amount of \$7,620 plus costs. It is en-
7 titled to judgment against plaintiff in that amount.

8 Since this judgment on the counterclaim more
9 than covers what plaintiff is entitled to or would be
10 entitled to on his claim, namely, \$7,533, the plaintiff is
11 entitled to no recovery in this action.

12 Let me ask you, as far as the government, the
13 exact form of the judgment, I take it that the government
14 considers that it has now recovered the \$7,533, right?

15 MR. WILSON: That's right, your Honor.

16 THE COURT: All right. So the net judgment,
17 if we want to be accurate, would be a judgment for the
18 difference between the \$7,620 owed by the plaintiff to the
19 government and the \$7,533 already used to be applied or
20 credited against that amount, and that difference is \$87.

21 MR. WILSON: Right.

22 THE COURT: So the government is entitled to judgment.
23 dismissing the claim here of the plaintiff and is entitled
24 to a net judgment here of \$87 plus costs of the action.
25

JUDGMENT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 CIV. 1559 TPG

-----X
JESSE B. STEPHENS, on behalf of :
himself and all other persons :
similarly situated, :

Plaintiffs, :

- against - :

J U D G M E N T

UNITED STATES OF AMERICA; :
UNITED STATES POSTAL SERVICE; :
E. THEODORE KLASSEN, in his capacity :
as Postmaster General of the United :
States; :
UNITED STATES CIVIL SERVICE COMMISSION; :
ROBERT E. HAMPTON, in his capacity as :
Chairman of the United States Civil :
Service Commission; and :
ELMER B. STAATS, in his capacity as :
Comptroller General of the United :
States, :

Defendants. :
-----X

This action came on for trial before the court, Hon. Thomas P. Griesa, District Judge, presiding, and the issues having been tried on January 6 and 7, 1976, and a decision having been rendered, and the court having found that the plaintiff is entitled to the sum of \$7,533.00 on his claim against the defendant United States Postal Service, and that the defendant United States Postal Service is entitled to the sum of \$7,620.00 on its counterclaim against the plaintiff, and that the net sum owing between such parties is \$87.00, from the plaintiff to the defendant, and this court expressly determines that there is no just reason for delay in entering a final judgment, and that a final judgment, in favor of

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the defendant should be entered, it is

ORDERED AND ADJUDGED, that the judgment previously entered on January 22, 1976, is hereby vacated, and it is further

ORDERED AND ADJUDGED, that the defendant, shall have judgment against the plaintiff in the sum of \$87.00, plus its costs to be taxed by the clerk of the court.

Dated: New York, New York
February 11, 1976
March 15

/s/ Thomas P. Griesa
THOMAS P. GRIESA
United States District Judge

JUDGMENT ENTERED 3/16/76

/s/ Raymond F. Burghardt
Clerk

COPY RECEIVED

Robert B. Fiske Jr.
UNITED STATES ATTORNEY

8/9/76

Marion J. Bryant